

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 172 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI NARANSANG JHALA

Versus

NANUBEN WD/O AMARSANG SADUBHAIBHATIA  
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Appearance:

MR JN JADEJA for Petitioner

MR MR VYAS for Respondent  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. This Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908, has been filed by the petitioner-original defendant in Civil Suit No.287/84 against the order dated 14th December, 1998, recorded by the learned 2nd Jt.Civil Judge (S.D.), Ahmedabad (Rural),

dismissing the said application of the petitioner for amendment in written statement under Order 6 Rule 17 of the Civil Procedure Code.

2. The petitioner initially claimed that he was a tenant of the respondent. Thereafter during the course of the evidence, one witness Karsanbhai Banasing has deposed at Exh.153 that original plaintiff was in service and he used to carry on dairy business. On the strength of the said evidence, the petitioner filed an application for amending the written statement to the effect that the respondent was carrying a dairy business, the petitioner was a servant of the respondent and he was also attending the work of the respondent and therefore the respondent cannot remove the petitioner as servant against the principle of natural justice and, therefore, a petition has been made before the Labour Court being Reference No.1196/98 and therefore the suit is not maintainable.

3. After hearing the parties, the learned trial Judge dismissed the said application of the petitioner. Hence revision.

4. On hearing the parties, it appears that the trial court had jurisdiction to pass the aforesaid order. The trial court has considered the stand taken by the petitioner before the aforesaid application was filed for amendment in the written statement. Moreover, even if some averments are made by the witness during the cross examination, the petitioner cannot bring altogether a new case at the stage when the evidence is virtually over so far respondent is concerned. Moreover if the matter has been filed before the Labour Court, the Labour Court will entertain the same in accordance with rules and law. That would not give rise to a fresh cause of action for the present petitioner so far the amendment in the written statement is concerned. There is no material irregularity committed by the trial court while disposing of the said application for amendment in the written statement. No prejudice has been resulted. Therefore there is no question for interfering with the said order of the trial court.

5. In aforesaid view of the matter, this Civil Revision Application is ordered to be dismissed. However considering the facts and circumstances of the case and looking to the nature of relationship between the parties, there shall be no order as to costs. Rule stands discharged. Interim stay against further prosecution of the suit before the trial court stands vacated.

(D.P. Buch, J.)

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